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THE BOEING COMPANY

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16
17 UNITED STATES OF AMERICA,
18 Plaintiff,
19 v.
20 THE BOEING COMPANY,
21 Defendant.

CASE NO. CV 08-05720 DSF (MNx)

**NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT OF DEFENDANT THE
BOEING COMPANY**

Date: August 30, 2010
Time: 1:30 pm
Courtroom: 840
Judge: Hon. Dale S. Fischer

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant, The Boeing Company (“Boeing”), respectfully moves for summary judgment on the Claims for Relief set forth in the Government’s Second Amended Complaint (the “Complaint”) on the grounds that there are no genuine issues of material fact and that Boeing is entitled to judgment as a matter of law. Boeing respectfully refers the Court to the attached Memorandum of Points and Authorities in Support of Motion for Summary Judgment of Defendant The Boeing Company (the “Memorandum”) and, pursuant to Local Rule 56-1 and § 8(c) of this Court’s Standing Order for Cases Assigned to Judge Dale S. Fischer, Boeing’s Statement of Uncontroverted Facts and Conclusions of Law in Support of Motion For Summary Judgment of Defendant The Boeing Company (“Statement of Uncontroverted Facts and Conclusions of Law”).

The government has brought this case under the civil False Claims Act (“FCA”), 31 U.S.C. §§ 3729-3733, predicated on Boeing’s alleged violation of the Truth In Negotiations Act (“TINA”), 10 U.S.C. § 2306a. The government asserts that Boeing violated the FCA by failing to disclose in connection with the negotiation of Contract No. F33657-98-C-2000 (the “Contract”) certain so-called “cost or pricing data,” which data must be disclosed during negotiations of contracts subject to TINA. The government argues that as a result of this alleged nondisclosure, Boeing’s Certificate of Current Cost or Pricing Data (the “Certificate”) was a false statement that caused false claims to be submitted to the government. Complaint ¶¶ 30, 35-37. The government further argues that all of Boeing’s “invoices and progress payment requests” on the Contract were false claims because they reflected a falsely inflated Contract price that resulted from this alleged nondisclosure. Complaint ¶¶ 28, 29.

As established in the Memorandum, however, the government’s contentions are meritless. No data existed at Boeing as of the date of the Certificate that significantly would have affected the price that the parties negotiated for the

1 Contract and Boeing, therefore, did not fail to disclose cost or pricing data.
 2 Moreover, even if undisclosed cost or pricing data had existed, Boeing's Certificate
 3 was not knowingly false under the FCA because Boeing reasonably believed that
 4 Boeing had disclosed all relevant data and that the Air Force did not consider any
 5 undisclosed data to be significant to the negotiation of the Contract price. In
 6 addition, none of Boeing's Contract invoices or progress payment requests were
 7 false claims under the FCA, and Boeing did not fraudulently induce the Air Force
 8 to enter into the Contract or to exercise the Contract options.

9 WHEREFORE, for the reasons set forth in the attached supporting
 10 Memorandum and Statement of Uncontroverted Facts and Conclusions of Law,
 11 Boeing respectfully requests that the Court grant Boeing's Motion for Summary
 12 Judgment and dismiss this case in its entirety.

13
 14
 15 Dated: June 28, 2010

Respectfully submitted,

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 20 By: /s/ Neal R. Marder
 Neal R. Marder

21 By: /s/ James J. Gallagher
 James J. Gallagher

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 23 Attorneys for Defendant
 THE BOEING COMPANY
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PROOF OF SERVICE

I hereby certify that on June 28, 2010, I electronically filed **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OF DEFENDANT THE BOEING COMPANY; [PROPOSED] JUDGMENT GRANTING MOTION FOR SUMMARY JUDGMENT OF DEFENDANT THE BOEING COMPANY; AND [PROPOSED] ORDER GRANTING MOTION FOR SUMMARY JUDGMENT OF DEFENDANT THE BOEING COMPANY** with the clerk of court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on June 28, 2010, at Los Angeles, California.

/s/ Elizabeth Adelakun

Elizabeth Adelakun